

*Application No.: 10/597,773*  
*Atty. Docket No.: 5860CK-1*

#### REMARKS/ARGUMENTS

In an Office Action dated September 26, 2007, the Examiner rejected claims 1-12. More specifically, claims 1, 2, 5 and 8 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Hamada (U.S. Patent No. 6,369,899). The Applicants herewith cancels claims 2, 3, 4 and 10-12 without intending to abandon or dedicate to the public any patentable subject matter. In addition, Applicants have added new claim 13. Accordingly, claims 1, 5-9 and 13 are now pending. As set out more fully below, reconsideration and withdrawal of the rejection to the claims is respectfully requested.

#### **Rejection Under 35 U.S.C. § 102(b) – U.S. Patent No. 6,369,899**

As noted above, claims 1, 2, 5 and 8 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Hamada. The Applicants respectfully traverses this rejection for at least the following reasons: Applicants have amended claim 1 to include the limitations of previously presented claims 3 and 4 and as such, Applicants respectfully submit that Hamada does not teach all material elements: (1) the irregular pattern generation means as a cloth; and (2) the photographing means using at least two cameras. It is well recognized that claims are anticipated if, and only if, each and every, as set forth in a claim as found in a single prior art reference. Vertegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown as a complete detail as contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989); see MPEP § 2131. To constitute anticipation, all material elements of the claim must be found in one prior art source. In re Marshall, 198 U.S.P.Q. 344 (C.C.P.A. 1978). Applicants believe with this amendment that any rejection to claim 1 is deemed moot and thus should be withdrawn. Claim 8 has been similarly amended to claim 1. As such, any rejection directed to claim 8 is deemed as moot and should be withdrawn.

#### **Examiner's Judicial Notice**

In paragraphs 6 and 7 of the Office Action, the Examiner states he has taken official notice of the fact that using a cloth/sock on which an irregular pattern is formed and that comes in contact with the surface of the object to generate an irregular pattern would have been obvious, in his

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opinion, to one of ordinary skill in the art at the time of the invention by way of the method as disclosed by Hamada. The Applicants traverse the Examiner's official notice. The Applicants believe that there have been no technologies using a cloth/sock worn on an object/foot to generate a pattern. Moreover, the present invention differs from the prior art cited as it does not require the use of a projector. As such, the Applicant demands the Examiner to produce authority for his statement under MPEP § 2144.03. Applicants have rebutted the well-known statement in this response and respectfully requests that the Examiner, to satisfy the substantial evidence test, point to some concrete evidence in the record to support the findings of his official notice. See In re Zurko, 258 F.3d 1379, 1386; 59 U.S.P.Q. 2d 1693, 1698 (Fed. Cir. 2001).

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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